

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MAY 9, 2006

President Danny Cook called the meeting to order at 10:07 A.M. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Danny Cook, President, Ralph Buckner, Vice President, Bob Foster, Wendy Hellum, David Murphy, Stephen Murphy, and Nancy Vincent.

Staff members present were Robert Gribble, Executive Director, Lauren Kitchell, Staff Attorney, and Sandra Cooper and Jimmy Gossett, Administrative Assistants.

APPROVAL OF MINUTES:

A motion was made by Mr. Steve Murphy to approve the minutes of the March 14, 2006 Board Meeting.

Seconded by Mr. Buckner

Adopted by voice vote

A motion was made by Mr. Foster to approve the minutes of the April 11, 2006 Board Meeting.

Seconded by Mr. Buckner

Adopted by voice vote

APPROVAL OF FUNERAL DIRECTOR AND/OR EMBALMER LICENSES:

Upon motion, based upon the application records, the following applicants were approved for licensure.

Anthony Jackson
Morristown, TN

Embalmer

Kimberly Nicole Jackson
Antioch, TN

Funeral Director/Embalmer

Dena Faye Gaia
Camden, TN

Funeral Director/Embalmer
Reciprocity

Tonja Lachelle Walls-Davis
Round Rock, TX

Funeral Director/Embalmer
Reciprocity

APPROVAL OF ESTABLISHMENT LICENSES: Upon motion, based upon the application records, the following applicants were approved for licensure.

**Dilday Funeral Home, Inc.
Union City, TN**

**New Establishment
Ownership: Corporation**

**Dockery Funeral Home, Inc.
Morristown, TN**

**Name & Ownership Changes
New Ownership: Corporation**

**Dotson Funeral Home, Inc.
Maryville, TN**

**Name & Ownership Changes
New Ownership: Corporation**

**Bills-McGaugh Funeral Home, Inc.
Lewisburg, TN**

**Change of Ownership
New Ownership: Corporation**

**Tetrick Funeral & Cremation Services
Johnson City, TN**

**Change of Ownership
New Ownership: LLC**

**Tetrick Funeral Home
Bluff City, TN**

**Change of Ownership
New Ownership: LLC**

**Hathaway-Percy Funeral Home
Elizabethton, TN**

**Change of Ownership
New Ownership: LLC**

**Valley Funeral Home
Erwin, TN**

**Change of Ownership
New Ownership: LLC**

**LEGAL REPORT:
LAUREN L. KITCHELL, STAFF ATTORNEY**

1. Case No.: L04-BUR-RBS-2004182021

Complainant alleges that the respondent FH owes him money. The complaint involves a 1978 pre-need contract entered into by complainant's parents. The 1978 pre-need contract states that services will be provided by the respondent FH. The complainant's brother, a beneficiary of the pre-need contract, passed away and the services were performed at an out of state FH. The remains were then flown to the respondent FH for interment. There is a dispute as to whether the complainant was authorized to assign the contract to the out of state FH from the respondent FH where the pre-need contract was purchased.

The FH responds that the family unilaterally decided to assign their pre-need contract to another out of state FH and this is not allowed because the contract was not assignable. The FH states that the out of state FH demanded that they pay for the full value of the brother's funeral, which is not reasonable because inflation had eroded the cash value of the funds. They also state that if the funeral were handled by them they would have honored the contract at no cost, as stated in the 1978 contract. The FH also states that they received the

remains and performed the interment services, a \$1695 value, at no cost because of the contract.

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

2. Case No.: L06-FUN-RBS-2006013131

Complainant alleges that the respondent FH overcharged her for her sister-in-law's funeral, falsely advertised prices for a package funeral, charged them for preparation of the body but did not fix her hair the way they wanted, promised to place a temporary marker on the gravesite but did not, and that the FD's were rude and unsympathetic.

FH responds that the advertisement is for a package and the complainant did not purchase a package. The FH responds that they did not overcharge for the funeral, and they could not fix the decedents hair like the complainant wanted because they did not have a cosmetologist on staff. They deny being rude and they state that the grave digger placed a temporary marker on the grave and they have no control over the marker once it is placed. They are sorry the complainant is not happy but they deny any wrongdoing.

Recommendation: Dismiss

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Hllum

Adopted by voice vote

3. Case No.: L06-FUN-RBS-2006013021

Complaint is the result of an inspector's notice of violation which alleges: based on a random inspection of records, a copy of a cremation authorization form was not in a file. The inspector also noted FTC violations, including deficiencies on the GPL, OBCPL, and the goods and services contract.

FH promptly sent in a copy of the cremation authorization form and corrected price lists.

Recommendation: Consent Order assessing a \$250 civil penalty and authorization for a formal hearing.

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Ms. Hellum

Adopted by voice vote

4. Case No.: L05-FUN-RBS-2005027981

At its March 2006 meeting, the Board assessed a \$500 civil penalty against respondent because of an internet listing of an unlicensed cremation service company which had the phone number of a licensed funeral director as its contact number.

New information has been sent to legal from the internet listing company stating that they compile the information from public information sources and that the respondent did not request the listing. They state that they have now removed the listing and they are sorry for the inconvenience that it may have caused.

Recommendation: Dismiss

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

5. Case No.: L06-FUN-RBS-2006006061

Complaint is the result of an inspector's notice of violation which alleges: based on a random inspection of records, a copy of the cremation authorization form did not state the required information for the crematory used. A copy of the crematory license that the FH uses was not available for inspection. A copy of a FD license was not available for inspection. The inspector also noted FTC violations, including deficiencies on the GPL, CPL, OBCPL, and the goods and services contract.

FH promptly sent in a copy of the cremation authorization form, crematory license, FD license, and corrected price lists.

Recommendation: Consent Order assessing a \$500 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

6. Case No.: L06-FUN-RBS-2006013011

Complaint is the result of an inspector's notice of violation which alleges: based on an interview with the manager, the inspector noted that the FH is not providing a copy of the cremation authorization to the agent until after the cremation is performed, and the FH is not keeping a copy for its records. The inspector also noted FTC violations, including deficiencies on the GPL, CPL, OBCPL, and the goods and services contract.

FH promptly sent in corrected price lists. FH states that it abides by the law and gives a copy to the authorizing agent after it receives the remains from the crematory and keeps a copy in their file.

Recommendation: Consent Order assessing a \$250 civil penalty and authorization for a formal hearing. Letter of Caution – discussing when to give the authorizing agent a copy of the cremation authorization.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

7. Case No.: L06-FUN-RBS-2006004681

Complainant alleges that the respondent FH did not give her a receipt for payment of her brother's funeral. She alleges that there were mistakes on his death certificate and that she did not receive a copy of it for sixteen days. She also alleges that the FH owes her money and that her brother's hair and makeup were unacceptable.

After two requests the FH has not responded.

Recommendation: Letter of Warning – must respond to the Board, and use good business practices.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation and additionally issue a Consent Order assessing a \$250 civil penalty and authorization for a formal hearing.

Seconded by Mr. David Murphy

Adopted by voice vote

8. Case No.: L06-FUN-RBS-2006014151

Complaint is the result of an inspector's notice of violation which alleges: violation of TCA §62-5-313(c). The inspector issued a citation based on these facts: an unlicensed person works at the FH on Monday, Tuesday, Wednesday, and Friday from 9:00 A.M. until 4:30 P.M. alone and on every other Saturday from 9:00 A.M. until 1:00 P.M. The unlicensed person stated that a FD is only called

when he is needed and comes down from the other establishment where he works.

The FH responds that the unlicensed employees were hired for secretarial and custodial duties and they never make arrangements or do anything that a licensed FD must do. Whenever someone calls or comes in to make arrangements the manager or another licensed FD is called to come in. The manager states that he is on call and his travel time is 10-15 minutes to the FH and if he is not available then four other licensed FD's are. The manager states that the law does not require a manager to be on the premises 40 hours a week. He states that it would be rare that any FH, large, small, or a branch, has a FD on the premises 40 hours a week. He states that it is just not feasible. The FH feels that it is in compliance with the law and asks the Board to consider their viewpoint.

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

9. Case No.: L05-FUN-RBS-2006016121

Complaint is the result of an inspector's notice of violation which alleges: a copy of the crematory license and last inspection report that the FH uses was not available for inspection. The inspector also noted FTC violations, including deficiencies on the GPL, and CPL.

FH promptly sent in the corrected price lists.

Recommendation: Consent Order assessing a \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

10. Case No.: L06-FUN-RBS-2006010131

Complainant alleges that FH did not give him a GPL when he went to make arrangements for his mother, and he was told that they would work with him on the price. Complainant paid for the funeral of his mother in full and afterwards asked for a copy of their GPL. Complainant alleges that the prices that he paid are different than those set out in the GPL. He also states that he paid for a casket and box that cost \$1,860 more than they do at other funeral homes in the

area. Complainant feels that he was ripped off and that the FD's were unprofessional.

After two requests, no response has been received from the FH.

Recommendation: Consent Order assessing a \$750 civil penalty and authorization for a formal hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

11. Case No.: L06-FUN-RBS-2006007441

Complainant, a Missouri mortuary service, alleges that respondent FH has not paid their bill. The complaint alleges that respondent contacted them and made an oral contract with them about performing removal and preparation of remains to be shipped to TN. Complainant alleges that it performed the removal, preparation, packaging, and flight arrangements for deceased and the bill has not been paid.

After two requests, no response has been received from the FH.

Recommendation: Letter of Warning – must respond to the Board and use good business practices.

A motion was made by Mr. David Murphy to accept Counsel's recommendation and additionally issue a Consent Order assessing a \$250 civil penalty and authorization for a formal hearing.

Seconded by Mr. Steve Murphy

Adopted by voice vote

12. Case No.: L06-FUN-RBS-2006014101

Complaint is the result of an inspector's notice of violation which alleges: FTC violations, including deficiencies on the GPL, CPL, OBCPL, and goods and services contract.

FH sent in the corrected price lists.

Recommendation: Consent Order assessing a \$250 civil penalty and authorization for a formal hearing.

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

13. Case No.: L06-FUN-RBS-2006012461

The Board office received a bad check from this FH in March for a name change application. After several attempts by the Board office to remedy the situation, the respondent has not cooperated.

After two requests, no response has been received.

Recommendation: Consent Order assessing a \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation and additionally issue a Letter of Warning.

Seconded by Ms. Buckner

Adopted by voice vote

14. Case No.: L06-FUN-RBS-2006004071

Complainant alleges that FD has not provided a head stone that she paid \$600 to him for. She made a check out to the FD personally. She states that she has been in contact with the FD for over a year and he has not refunded her money or provided a grave stone.

The FD states that this compliant has no merit. He states that the monument company failed to deliver the monument in a timely manner and that the funds were refunded to the complainant. He states that he contacted his bank after she said she did not receive the check and the bank informed him that the cashiers check had been cashed at a check cashing store in Illinois. He states that his bank is trying to get to the bottom of this.

Recommendation: Consent Order assessing a \$1000 civil penalty and authorization for a formal hearing.

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

15. Case No.: L06-FUN-RBS-2006013531

Anonymous compliant alleges that five people were fired from this FH because a non-licensed person was doing the embalming job of aspirating bodies.

FH's corporate counsel responds that it received a letter from an attorney alleging that an unlicensed person was performing embalming at the FH. The FH immediately performed an investigation by interviewing former and current employees. The investigation determined that an apprentice funeral director may have been involved and he told the investigators in the presence of his attorney that he aspirated 22 bodies in a four month period in 2004. The FH responds that it interviewed all persons named by the apprentice who would have knowledge of this. All of the people interviewed denied that they had knowledge of this allegation. The apprentice's supervisor does admit that he saw the apprentice begin to aspirate a body but that he immediately stopped him and told him that he was not allowed to aspirate as an apprentice funeral director. The FH has reviewed the files along with the apprentice's log of activities. The apprentice was terminated at the FH and he has informed the company that he is now employed in a completely unrelated line of business and has no intention of returning to a FH. The FH states that it has instructed all of its managers to make sure all apprentices understand their role in the FH's.

Recommendation: Consent Order assessing a \$1000 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Steve Murphy to table the complaint until the staff attorney can obtain additional information.

Seconded by Mr. Buckner

Adopted by voice vote

16. Case No.: L06-FUN-RBS-2006012431

Complainant FH alleges that an employee apprentice funeral director may have aspirated 22 bodies without their knowledge or permission. Through an internal investigation the FH has interviewed respondent and he claimed during that interview that he aspirated bodies from September 2004 through December 2004. He stated that he stopped when his supervisor saw him aspirating and told him to stop. The FH states that the respondent told them that he made a list of the bodies he aspirated but the FH has been unable to obtain this list from the respondent.

After two requests, the respondent has not responded to the complaint.

Recommendation: Consent Order assessing \$1000 civil penalty, revocation of the apprentice registration, and authorization for a formal hearing.

A motion was made by Mr. Steve Murphy to table the complaint until the staff attorney can obtain additional information.

Seconded by Mr. Buckner

Adopted by voice vote

STAFF REPORT:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

1. Closed Establishments:

There has been one establishment closed since the last board meeting.

- **Bennett-May & Company Funeral Home – Pulaski, TN**
The office received a letter from Steven B. Pierce, the manager, stating the establishment located at 216 West College Street closed effective April 11, 2006.

2. Disciplinary Actions:

These Consent Orders have been previously approved by the Board; the respondents have signed them and paid the civil penalties. The Executive Director requests the Board's acceptance of these orders.

Complaint No. 2005043881

Violation: Using an additional establishment name other than licensed name and failure to indicate an employee was not a licensed funeral director on a business card
Action: \$1000 Civil Penalty

Complaint No. 2005030531

Violation: Immoral or unprofessional conduct – failure to furnish contracted merchandise or services for two years after receiving payment
Action: \$1000 Civil Penalty

Complaint No. 2005024581

Violation: Several FTC price violations
Action: \$750 Civil Penalty

Complaint No. 2006006211

Violation: Several FTC price violations, current license of an embalmer not available and failure to indicate an employee was not a licensed funeral director on a business card
Action: \$750 Civil Penalty

Complaint No. 2006006961

Violation: Several FTC price violations and ventilation system in preparation room not working properly
Action: \$500 Civil Penalty

Complaint No. 2005045311

Violation: Several FTC price violations and an employee's licenses as a funeral director and embalmer were not available for inspection
Action: \$500 Civil Penalty

Complaint No. 2005043831
Violation: Several FTC price violations
Action: \$500 Civil Penalty

Complaint No. 2005042861
Violation: Several FTC price violations
Action: \$500 Civil Penalty

Complaint No. 2005039331
Violation: Several FTC price violations
Action: \$500 Civil Penalty

Complaint No. 2006006321
Violation: FTC price violations and failure to affix a permanent ID device to the decedent
Action: \$500 Civil Penalty

Complaint No. 2006006931
Violation: Several FTC price violations
Action: \$250 Civil Penalty

Complaint No. 2006006261
Violation: Several FTC price violations
Action: \$250 Civil Penalty

Complaint No. 2005042711
Violation: Several FTC price violations
Action: \$250 Civil Penalty

Complaint No. 2006006091
Violation: Several FTC price violations
Action: \$250 Civil Penalty

Complaint No. 2006006941
Violation: Several FTC price violations
Action: \$250 Civil Penalty

Complaint No. 2006009111
Violation: Several FTC price violations
Action: \$250 Civil Penalty

Complaint No. 2006006451
Violation: FTC price violations
Action: \$250 Civil Penalty

A motion was made by Mr. Steve Murphy to accept the Consent Orders.

Seconded by Mr. Buckner

Adopted by voice vote

3. Manager Changes

There have been five establishments report manager changes since the last board meeting.

Name of Establishment	Name of New Manager
Gallatin FH & MG at Crestview Gallatin, TN	Damon W. Hobbs
Pikeville Funeral Home Pikeville, TN	George Edward Williams
Bills-McGaugh Funeral Home Lewisburg, TN	James Edward Davis, Jr.
Davis Funeral Home Harriman, TN	Preston S. Davis
Whitwell Memorial Funeral Home, Inc. Whitwell, TN	Donna G. Kilgore

REQUEST OF THE BOARD – RICHARD TETRICK OF ELIZABETHTON, TN:

Mr. Tetrick, a funeral director, embalmer, business owner and former board member, requested the Board consider changing its long-standing policy and no longer require the personal appearance of an applicant before the Board for routine approval of individual or establishment applications.

Discussion was held by board members, but no action was taken on this matter.

OTHER BUSINESS:

Executive Director Robert Gribble reported to the Board that the State's contract with the current testing agency expires June 30, 2006 and appropriate means are taking place to have a new testing agency in place by expiration of the contract.

A motion was made by Mr. David Murphy for the Board not to meet in July 2006.

Seconded by Ms. Vincent

Adopted by voice vote

By consent, the Board agreed to have a work session following the board meeting in August for the purposes of discussing possible rule changes and whether to require personal appearances of individuals before the board for approval of applications.

A motion was made by Ms. Hellum to adjourn.

Seconded by Mr. David Murphy

Adopted by voice vote

There being no further business, the meeting was adjourned at 11:35 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director